

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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Amendment of the Commission's )  
Regulatory Policies to Allow )  
Non-U.S. Licensed Space Stations )  
to Provide Domestic and )  
International Satellite Service )  
in the United States )  
\_\_\_\_\_ )

IB Docket No. 96-111

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

COMMENTS OF L/Q LICENSEE, INC. and  
LORAL SPACE & COMMUNICATIONS LTD.

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Date: July 15, 1996

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## EXECUTIVE SUMMARY

Loral Space & Communications Ltd. and L/Q Licensee, Inc., agree with the Commission's conclusion that U.S. consumers of both domestic and international satellite services will benefit from increased competition resulting from the availability of greater access to service over non-U.S. satellite systems. The Commission should implement a policy of taking into consideration reciprocal competitive opportunities for U.S. satellite systems when reviewing earth station applications to provide satellite services for non-U.S. satellites. Reviewing effective competitive opportunities for U.S. satellites can help avoid market disparities which may adversely impact U.S. satellite operators.

However, market distortions may also arise in the context of the Commission's role as spectrum manager. Authorizing service by non-U.S. satellites has the potential to reduce competition by foreclosing access to spectrum for U.S. satellites. Accordingly, the linchpin of the Commission's rules governing access to non-U.S. satellites must be U.S. spectrum management policies. The policies in DISCO II do not preserve sufficient flexibility for the Commission to exercise the necessary discretion in this spectrum management role.

For example, the Commission should place more emphasis on eliminating technical barriers to entry, including encouraging foreign administrations to adopt consistent band plans and equipment standards. The Commission should also take into account the Executive Branch efforts at the World Trade Organization negotiations, and avoid treating satellite landing rights as a "trade" issue. The

methods which private industry is using to gain landing rights in foreign countries may also help model the Commission's policies. To implement these suggestions, Loral Space and L/Q Licensee recommend revisions to the rules and policies proposed in the NPRM. Finally, Loral Space and L/Q Licensee recommend that the Commission not adopt policies for authorizing service in U.S. markets by intergovernmental satellite organizations and their affiliates that are inconsistent with those adopted for other non-U.S. satellite systems.

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**COMMENTS OF L/Q LICENSEE, INC. and  
LORAL SPACE & COMMUNICATIONS LTD.**

Pursuant to Section 1.415 of the Commission's Rules, L/Q Licensee, Inc. (LQL) and Loral Space & Communications Ltd. (Loral Space) hereby submit their joint comments on the Commission's proposals in the Notice of Proposed Rule Making, FCC 96-210 (released May 14, 1996) (NPRM or DISCO II), to adopt policies and procedures for consideration of applications for U.S. earth stations to provide service to U.S. domestic and international markets through non-U.S. satellite systems.

LQL and Loral Space have a broad range of satellite interests which would be affected by adoption of the Commission's proposals in the NPRM. LQL is the licensee of the Globalstar™ low-earth orbiting MSS Above 1 GHz system,<sup>1</sup> and

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<sup>1</sup> See Loral/QUALCOMM Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995), affirmed, FCC 96-279 (released June 27, 1996). The authorization was granted to Loral/QUALCOMM Partnership, L.P., which is the parent corporation of LQL, and was assigned to LQL pursuant to Commission approval in September 1995 (File No. 148-SAT-TC-95).

plans to provide voice, data, facsimile and other services in U.S. and global markets. Loral Space, the controlling parent corporation of LQL, has interests in the Fixed-Satellite Service. Earlier this year, Loral Space was assigned two orbital slots at 28° and 105.5° E.L. for two of its Ka-band system satellites.<sup>2</sup> Loral Space has been authorized to construct, launch and operate two C-band/Ku-band satellites in the fixed satellite service at 77° and 129° W.L. to provide U.S. domestic coverage.<sup>3</sup> Loral Space recently filed technical modifications (File Nos. 123/124-SAT-MP-96) so that it can provide international services from these orbital locations pursuant to the Commission's policy to authorize U.S.-licensed satellites to provide domestic and international satellite services.<sup>4</sup> Loral Space also has applications pending to provide domestic and international FSS from the extended Ku-band (File Nos. 125/126-SAT-P/LA-96), and from the Ka-band (File Nos. 109-SAT-P/LA-95, 110-SAT-P-95, 187-SAT-AMEND-95, and 188/189-SAT-P/LA-95). In addition to these MSS and FSS interests, Loral Space holds a controlling interest in Continental Satellite Corp., which has been assigned two orbital locations for Direct Broadcast Satellite service (File No. DBS 87-01).

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<sup>2</sup> Assignment of Orbital Locations to Space Stations in the Ka-Band, DA 96-705 (released May 6, 1996).

<sup>3</sup> See Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, DA 96-713 (released May 7, 1996).

<sup>4</sup> See Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellites, 11 FCC Rcd 2429 (1996).

I. THE COMMISSION SHOULD ADOPT POLICIES WHICH PROMOTE ENTRY AND COMPETITION IN U.S. SATELLITE SERVICE MARKETS BY NON-U.S. SATELLITE SYSTEMS.

Loral Space and LQL agree with the Commission's conclusion that U.S. consumers of both domestic and international satellite services will benefit from increased competition resulting from the availability of greater access to non-U.S. satellite systems for both types of service. NPRM, ¶¶ 8-9. As the Commission recognizes, "[f]air, vigorous competition among multiple providers leads to lower prices, better service, and more innovative service offerings for satellite communications users in the United States." NPRM, ¶ 8.

Loral Space and LQL also agree that the Commission should take into consideration reciprocal competitive opportunities for U.S. satellite systems when reviewing applications for provision of satellite services over non-U.S. systems. As the Commission correctly points out, a policy that opens U.S. satellite service markets to foreign competition may jeopardize the competitive position of U.S. systems. U.S. licensed systems may be placed at a disadvantage if there is a disparity in market coverage between U.S. and non-U.S. systems. NPRM, ¶ 11. Reviewing competitive opportunities for U.S. systems in foreign markets allows the Commission to consider what the competitive impact of granting access to a non-U.S. system would be and whether the public interest is served by authorizing such service.

However, competitive disparities and market distortions may also arise in the context of the Commission's technical standards for satellite systems. Issues



regarding spectrum management, competition and market access are frequently interconnected. For example, the Commission recently proposed to limit access to certain U.S. markets by Inmarsat in order to ensure that the U.S.-licensed MSS system (AMSC) has sufficient spectrum available to achieve a competitive service.<sup>5</sup> And, the Commission has proposed to give AMSC "first priority" to spectrum in the lower and upper L-band frequencies, again, to ensure that AMSC is technically capable of achieving a competitive market position.<sup>6</sup>

The Commission explained that it wants "competition in the U.S. market, but the first step is to ensure sufficient spectrum for the U.S. domestic MSS system to become an effective competitor."<sup>7</sup> Thus, in exercising its role as spectrum manager, the Commission has implicitly concluded that licensing earth stations which access non-U.S. satellites has the potential to reduce competition by foreclosing access to spectrum for U.S. satellites. Because spectrum is a finite resource, the most critical issue for granting access to a foreign system may, in

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<sup>5</sup> See Provision of Aeronautical Services via the Inmarsat System, FCC 96-161 (released May 9, 1996).

<sup>6</sup> See Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band, FCC 96-132, ¶¶ 7-17 (released June 18, 1996) ("We can and should . . . take reasonable and appropriate steps to ensure that our licensees have a fair opportunity to compete").

<sup>7</sup> Provision of Aeronautical Services, FCC 96-162, ¶ 19.

fact, be a technical one: how the proposed use of satellite spectrum will impact the availability of "sufficient spectrum" to ensure competitive U.S. systems.<sup>8</sup>

In DISCO II, the Commission proposes to consider applications to access non-U.S. satellites based on a threshold reciprocal market entry standard, the "ECO-Sat" test, which would gauge the effective competitive opportunities for U.S. satellite systems in the home and route markets of the non-U.S. system. Applications to access those systems which meet this threshold test would then be processed on a par with applications to construct, launch and operate U.S. satellite systems.

Loral Space and LQL submit that the licensing policies and procedures proposed in DISCO II do not preserve sufficient flexibility for the Commission to exercise its critical role as spectrum manager to regulate market distortions which may arise from allocation of limited spectrum resources. Moreover, the Commission's goal of opening foreign markets to U.S. satellite systems must encompass encouraging foreign administrations to adopt spectrum management policies which promote effective competitive opportunities in non-U.S. markets. Accordingly, in these comments, Loral Space and LQL explain why the DISCO II proposals do not necessarily accomplish the goal of this proceeding (Section II),

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<sup>8</sup> The Commission recognized three critical considerations in achieving an "even-handed approach that allows the greatest degree of access to non-U.S. systems that is consistent with the public interest": the benefits of effective competition and open satellite communications markets; the need for responsible spectrum management; and, the dangers of market distortions. NPRM, ¶ 12.

and recommend modifications to the Commission's proposals to incorporate more flexibility to achieve the public interest goals of DISCO II (Section III).

II. SPECTRUM MANAGEMENT RATHER THAN THE ECO-SAT TEST SHOULD BE THE LINCHPIN OF POLICIES AUTHORIZING SERVICE BY NON-U.S. SATELLITE SYSTEMS

In DISCO II, the Commission indicates that it is ready to adopt a policy of working with the global satellite community to achieve mutual market access for international satellite systems. However, the ECO-Sat test diverts the focus of U.S. spectrum management policies into trade issues and fails to take into account the complex business relationships involved in providing global satellite services. Instead, the Commission's policies in this area should focus on the legal and *de facto* barriers to effective market access and how to eliminate them. The nature of the barriers is often more important to satellite systems than simply identifying the regulatory policies of the "home" market of a non-U.S. system, because a global "open skies" policy is irrelevant if each licensing administration adopts different standards for various satellite services.

A. As U.S. Spectrum Manager, the Commission Should Place More Emphasis on Eliminating Technical Barriers to Entry Than Defining Reciprocity in Global Telecommunications Markets.

Pursuing global policies on band-sharing, frequency coordination, and equipment compatibility would better serve the interests of U.S. licensees and the

public than the ECO-Sat test, and would offer incentives for foreign administrations to grant true competitive access.

Band-Sharing. The Commission and the U.S. non-geostationary (NGSO) Mobile-Satellite Service (MSS) applicants worked together to develop a band-sharing plan for the 1.6/2.4 GHz band.<sup>9</sup> Although each administration has the sovereign right to adopt a different band plan, adoption of substantially inconsistent band plans by various administrations would erect *de facto* entry barriers to U.S. Big LEO systems. In order to ensure effective market access for MSS Above 1 GHz systems, the Commission must encourage foreign administrations to adopt spectrum management policies which respect technical solutions forged between regulators and industry. Setting up burdensome "tests" for market entry may antagonize other countries and make them less willing to work toward mutual solutions for allocation and assignment of spectrum resources.

Spectrum Coordination. International coordination is another potential barrier to providing satellite service. As the Commission recently recognized in the context of aeronautical services, it often takes years for satellite systems from different administrations to complete coordination: "In seven years of negotiations, the five [MSS] systems have been unable to successfully complete coordination to

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<sup>9</sup> See Amendment of Commission's Rules to Establish Rules and Policies Pertaining to a Mobile-Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 76 RR2d 202, 215-16 (1994), modified on recon., FCC 96-54 (released Feb. 15, 1996).

operate the same frequencies on a co-coverage basis in North America and the surrounding geographical area."<sup>10</sup> Recognizing the barrier that international coordination poses to the provision of satellite services, the Commission indicated that Inmarsat's future entry into the U.S. domestic market would be conditioned upon having successfully completed coordination for the U.S. domestic MSS system.<sup>11</sup> Particularly in light of the recent surge of ITU notifications by foreign administrations, the effect of coordination must be considered before permitting non-U.S.-licensed satellites to access the United States.

Equipment Compatibility. Similarly, an important aspect of "open" markets for satellite systems is equipment compatibility. One of the major attractions of an international satellite system is the potential for subscribers to roam globally with mobile earth terminals and/or for U.S. manufacturers to market user equipment in countries which have granted landing rights to U.S. systems. Another critical requirement of an "open" market is interconnection with the domestic PSTN. An administration which grants landing rights for a foreign satellite system but impedes PSTN access, has failed to provide an effective competitive opportunity to non-U.S. satellites. A policy which promotes effective competitive opportunities must include policies to develop standards for mutual recognition of equipment and interconnection.

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<sup>10</sup> Provision of Aeronautical Services, FCC 96-161, ¶ 18.

<sup>11</sup> Id. at ¶ 19.

of multilateral discussions at the World Trade Organization. Within the WTO talks, the United States has offered to open its telecommunications markets if other nations open their markets, with the goal of achieving "substantial market access world-wide for [the United States'] highly competitive telecommunications industry."<sup>15</sup>

Whatever success is achieved at the WTO, it is clear that the policies outlined in DISCO II cover similar ground. Indeed, just last week, the U.S. Trade Representative noted that its "objective in the [WTO] negotiations is to obtain levels of openness in the telecom markets of other participants equivalent to the level in the United States."<sup>16</sup> The USTR is seeking comments from U.S. industry on "commitments the United States should seek in wire or wireless communications, satellite systems, regulatory schemes, interconnection issues, foreign ownership restrictions, and competition safeguards, among other things."<sup>17</sup>

The Executive Branch always takes a policy interest in whether the Commission grants access to U.S. markets by non-U.S. telecommunications providers.<sup>18</sup> The Commission has not explained how agreement at the WTO would

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<sup>15</sup> Statement of Amb. Charlene Barshefsky, "Basic Telecom Negotiations" (April 30, 1996).

<sup>16</sup> Trade Policy Staff Committee, Request for Comments Concerning Basic Telecommunications Services Negotiations Under World Trade Organization's General Agreement on Trade in Services, 61 Fed. Reg. 36606 (July 11, 1996).

<sup>17</sup> Id.

<sup>18</sup> See, e.g., "Agencies Ask FCC to Defer Action on Requests to Use Canadian DBS Slots," Communications Daily, at 4 (July 3, 1996) (describing communications of Executive Branch agencies to FCC regarding applications to provide DBS in the

impact the rules and policies adopted through DISCO II, or whether any agreements reached by the Executive Branch would supersede the ECO-Sat test. In either event, because the Executive Branch plans to establish policies regarding the level of openness of U.S. telecommunications markets to foreign competition, it may be premature, redundant and/or inconsistent for the Commission to adopt the proposals in DISCO II as written.<sup>19</sup> Moreover, were U.S. policy to change, the Commission would still have in place a cumbersome regulatory regime that would require another rulemaking proceeding to change. Given that the Executive Branch is likely to provide guidance on the issues relating to the degree of reciprocity for U.S. telecommunications markets, the Commission can and should concentrate its efforts in this area on adopting policies based on its essential and unique responsibilities for spectrum management.<sup>20</sup>

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U.S. using transponders on Canadian satellites); see also Letter from Vonya McCann, Dept. of State, and Larry Irving, NTIA, to FCC Chairman Reed Hundt (dated Sept. 29, 1995) (discussing competitive principles critical to action on application of COMSAT to participate in procurement of ICO-P global satellite facilities).

<sup>19</sup> The Commission rejected similar concerns in adopting its ECO analysis for granting Section 214 applications to foreign-affiliated entities. Market Entry and Regulation of Foreign-Affiliated Entities, 11 FCC Rcd 3873, 3964-66 (1995). Loral Space and LQL agree that the Commission should take reciprocal market entry into account in authorizing service by non-U.S. satellites. However, the spectrum management issues implicated by authorizing service by non-U.S. satellites suggest that a different approach may be required from that used for telecommunications entities.

<sup>20</sup> See 47 U.S.C. §§ 151-152.

C. The ECO-Sat Test May Prompt Retaliatory Trade Initiatives.

Although the ECO-Sat test addresses competition issues, adoption of this standard as the linchpin in licensing non-U.S. satellite systems may unintentionally send the wrong message to foreign licensing administrations. If the principal test to obtain landing rights in the United States is perceived as a bilateral market-for-market access test, then foreign licensing administrations may conclude that grant of landing rights to U.S. satellite systems should be treated as a "trade" issue.

Sending this message runs counter to the interests of the U.S. satellite systems. If landing rights are perceived as a commodity in the U.S., then foreign administrations may feel compelled not to grant access to their markets without receiving something in return. That is, when a U.S. satellite system seeks access to a foreign country's satellite markets, the foreign administration may adopt a retaliatory stance, and seek an item in trade for access to its satellite service markets. Since many countries do not have satellite systems which would seek U.S. landing rights, such countries may condition access for U.S. satellite systems on another commodity, e.g., content restrictions on U.S.-transmitted video services, provision of a certain level of satellite services, or access to U.S. markets for telecommunications services or unrelated commodities.<sup>21</sup> To achieve the benefits

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<sup>21</sup> Multilateral discussions such as those at the WTO appear to avoid this problem by requiring all participants to offer opportunities for foreign telecommunications carriers.



of open markets for U.S. consumers, the Commission should not adopt policies for authorizing access to non-U.S. satellites which suggest that grant of landing rights to a satellite system is a "trade" issue.

D. The ECO-Sat Test May Not Capitalize on the Success of Private Industry in Obtaining Access to Foreign Markets.

The Commission's ECO-Sat proposal does not explicitly take into account the role that private industry plays in opening foreign markets. Many commercial satellite systems, like Globalstar™, are operated as global partnerships. This business plan not only assists in raising financial support, but also provides incentives for foreign administrations to open their markets to U.S.-licensed systems. For example, the business plan for Globalstar™ requires that its service providers in each country obtain the necessary authorizations to access the system. Thus, in many if not most cases, in any given market, a domestic entity would be seeking authority to access the global satellite system.

This partnership arrangement for Globalstar™ is based on its conclusion that a domestic entity is likely to be a persuasive applicant because it would be more familiar with the needs of the markets and the impact of granting landing rights for the satellite system. Moreover, by relying on domestic service providers, the Globalstar™ system itself is more accurately depicted as a "global" system rather than simply a U.S.-based system. In fact, the Globalstar™ service providers anticipate that many administrations will authorize access to Globalstar™ for domestic as well as international services. In any event, the more

service providers which obtain landing rights in their assigned countries, the more attractive the services provided by the system become to subscribers and other administrations.

The Commission's stringent market-for-market access standard -- despite treating U.S. and non-U.S. systems even-handedly in many respects -- potentially undermines such partnerships because it categorizes satellite systems as either U.S. or non-U.S. This may have the effect of diminishing the benefits of global partnerships and may complicate the process of obtaining landing rights in foreign countries. By incorporating more flexibility into its licensing procedures, the Commission may be able to take advantage of the principles used by private, global partnerships in obtaining access to foreign markets.

### III. THE COMMISSION SHOULD ADOPT FLEXIBLE PROCEDURES FOR PROCESSING EARTH STATION APPLICATIONS SEEKING TO ACCESS NON-U.S. SATELLITES TO SERVE U.S. MARKETS.

In the NPRM, the Commission seeks comment on many issues concerning the processing of earth station applications to provide satellite services to U.S. markets via non-U.S. systems. As discussed above, a licensing regime focused on the ECO-Sat test does not appear best suited to achieve the Commission's ultimate goal of providing greater competition for U.S. markets. Accordingly, Loral Space and LQL submit that the more flexible procedures for processing such applications described below would better serve the interests of the United States and its satellite industry and should be adopted.

A. Earth, Not Space, Station Applications Should Be Considered.

The Commission correctly recognizes that the public interest would not be served by requiring non-U.S.-licensed satellite systems to obtain a U.S. license prior to serving U.S. markets. NPRM, ¶ 14. Such a license would be redundant, and the process of obtaining it would be time-consuming and wasteful. Moreover, the Commission has the opportunity to coordinate transmissions from the satellite during the ITU coordination procedure and to regulate transmissions to the satellite through an earth station application. It would be difficult to implement an effective global policy to open markets to foreign competition if the United States and other administrations did not accept the sufficiency of each other's licensing procedures. See id. Accordingly, authorizing access to non-U.S.-licensed satellite systems should be based only on the applications for the earth stations which would access such systems.

As the Commission recognizes, in order to authorize service to U.S. markets, the Commission must issue Title III licenses not only for the gateway earth stations but also for user terminals. NPRM, ¶¶ 7, 14-15. The Commission already has in place rules to process such applications to access U.S.-licensed satellites, and, it would be appropriate, as a general rule, to require the U.S. service provider for the non-U.S. system to demonstrate that its proposed fixed and mobile stations meet the Commission's existing technical standards for the specific service to be provided. By applying the same procedures to applications to access U.S. and non-U.S. satellites, the Commission will ensure that the licensing

procedure is even-handed, and will indicate that the United States is not attempting to impose any artificial barriers to service from non-U.S. satellites.

B. Applications to Access Non-U.S. Satellites Should Not Be Subject to Pre-Conditions.

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Currently, for domestic satellite service, an earth station applicant seeking to access a non-U.S. satellite is required to demonstrate that there is a shortage of capacity on U.S. satellites. NPRM, ¶ 5. For international service, there is no such requirement; and the applications are considered like other earth station applications. Id. The existing pre-condition for domestic service is clearly inconsistent with an "open skies" approach to permitting foreign satellite systems to serve U.S. markets. Accordingly, as it proposes to do, the Commission should eliminate this pre-condition for domestic service, and seek to ensure that foreign administrations do not apply a similar policy to U.S. systems seeking access to their satellite service markets.

C. The Commission Should Decide Processing Issues as Applications Are Received.

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Timely processing of earth station applications to access non-U.S.-licensed satellites should be an essential aspect of the procedures adopted by the Commission. For this reason, the Commission should not adopt its proposal to consider earth station applications to access foreign satellite systems only in processing groups with U.S. satellite system applications. NPRM, ¶ 16. Such a

policy may result in inconsistencies with the Commission's even-handed approach to processing such applications.

First, as the Commission recognizes, applications to access non-U.S. satellites may be filed not only before the satellites have been authorized by the foreign administration but also after the foreign satellite system has been licensed by another administration or has commenced the ITU notification process with another administration as its sponsor. See NPRM, ¶ 32. Assuming that the Commission decides to accept the sufficiency of the foreign administration's licensing procedure for the spacecraft (which the Commission proposes to do, NPRM, ¶ 14), the Commission cannot control or anticipate when earth station applications to access the system will be received in the United States, or the extent to which the satellite system's technical parameters may have already been authorized. To require these applications to be considered only in processing groups for U.S. satellites could impose delays if a processing round has not commenced, or could result in dismissal if the applicant "missed" a cut-off date.

Second, by seeking to place applications to access foreign satellite systems in the same processing groups as U.S. space station applications, the Commission may find its domestic procedures in conflict with its international obligations. On the one hand, the Commission may be negotiating with the licensing administration to coordinate the non-U.S. satellite system in the United States pursuant to ITU procedures; on the other hand, the Commission may find itself negotiating the technical parameters of the system with its operator and

competing U.S. applicants within a processing round. Such dual procedures may be viewed as not "opening" the U.S. market. And, if followed globally, the procedure could result in delays for U.S. systems seeking to obtain landing rights in foreign markets.

Third, "contemporaneous" processing does not appear feasible given the various scenarios in which applications to access non-U.S. satellite systems may arise. For example, there would be substantial differences in how an application for access to a non-U.S. satellite system would be treated if it were filed today for the MSS Above 1 GHz bands, the 2 GHz MSS bands, or the 28 GHz NGSO FSS bands.

- For the MSS Above 1 GHz bands, the Commission has decided that only five systems can be licensed to serve U.S. markets, and that it will not consider any more applications until it has completed processing the first six. An application from a non-U.S. system could be subject to dismissal for having missed the cut-off date.<sup>22</sup>

- Although applications have been filed to use the 2 GHz bands, the proceeding to adopt an allocation for MSS at 2 GHz remains pending, and no cut-off date has been set for competing applications.<sup>23</sup>

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<sup>22</sup> See Mobile-Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 76 RR2d at 215; see also Newcomb Communications, Inc., 8 FCC Rcd 3631, 3631-32 (CCB 1993).

<sup>23</sup> See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service, 10 FCC Rcd 3230 (1995).

○ For 28 GHz, one NGSO FSS system has appeared on a cut-off list, and both the allocation and the application remain pending.<sup>24</sup>

Were three service providers for three non-U.S. satellite systems to file applications to use these sets of MSS frequencies, the Commission would not be able to treat all three under one processing policy as proposed in the NPRM. Accordingly, because the Commission cannot expect applications to access non-U.S. satellites to be filed in synchronization with applications to construct, launch and operate U.S. satellites, it is not feasible to require the U.S. earth station applicants to adhere to the same processing procedures. Rather, the Commission's procedure for processing such applications must be sufficiently flexible to allow consideration of the application at any time. The Commission should consider each application as filed, and decide what procedures to follow based on the current circumstances in the U.S. By using a flexible approach to processing these applications, the Commission is more likely to achieve its public interest goal of increasing the availability of competitive satellite services for U.S. consumers.

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<sup>24</sup> See Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Third Notice of Proposed Rulemaking and Supplemental Tentative Decision, FCC 95-287 (released July 28, 1995); Public Notice, Report No. SPB-20, DA 95-1689 (released July 28, 1995).

D. The Commission Should Not Adopt Additional Ownership Restrictions.

As the Commission points out, Section 310 of the Communications Act of 1934, as amended, imposes certain ownership restrictions on Title III licensees to provide non-common carrier and common carrier services. NPRM, ¶ 58. However, these restrictions do not require the Commission to address issues of foreign ownership regarding non-U.S. space stations which would provide service through U.S. earth stations. See NPRM, ¶ 59. The Commission should not adopt any such restrictions.

Imposition of ownership constraints on the foreign satellite system operator -- which would not be a Commission licensee -- would clearly be viewed as an "artificial entry barrier." Given the very high costs of construction, launch and operation of satellite systems,<sup>25</sup> the Commission should leave the decisions regarding ownership of such systems to the system operator and the licensing administration, and not impose any ownership limitations on the system in the United States beyond those contained in Section 310.

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<sup>25</sup> See, e.g., Mobile-Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 76 RR2d at 212-13.



E. **Non-U.S. Satellite Systems Should Not Be Required to Demonstrate Compliance with All Legal, Technical and Financial Standards Applicable to U.S. Satellite Systems.**

The Commission proposes to require non-U.S. satellite systems to meet the legal, technical and financial requirements of U.S. satellite systems. NPRM, ¶ 53. The earth station applicant would be required to attach to its application information demonstrating compliance with these standards. NPRM, ¶ 61. Loral Space and LQL submit that use of this standard is not likely to achieve the goals of this proceeding, and, therefore, should be modified.

First, the Commission states that "duplicative licensing [of space stations] would be time-consuming and wasteful." NPRM, ¶ 14. Clearly, requiring a demonstration that non-U.S. licensed space stations meet all U.S. legal, technical and financial qualifications is tantamount to relicensing the system. And, it is not practical to require such compliance because, by the time the earth station application is filed, the non-U.S. system may already be licensed, under construction and/or launched.

Second, adopting this requirement would make the Commission's licensing procedures for non-U.S. systems appear less than even-handed. Because the Commission could not reasonably expect the space station operator to modify a system, already authorized by another administration, to meet the Commission's standards, the Commission would likely be forced to grant waivers or other exemptions from its rules on an *ad hoc* basis. There would then be no objective standard for the system to meet. Moreover, if such a policy were applied to U.S.